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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: EQUIFAX, INC., CUSTOMER DATA SECURITY BREACH LITIGATION,	)	MDL DOCKET NO. 2800 1:17-md-2800-TWT
	)	CONSUMER CASES

Transcript of a motion hearing before

The Honorable Thomas W. Thrash, Jr.

March 8, 2023; 2:00 p.m.

Atlanta, Georgia

Appearances:

For the Class: Kenneth S. Canfield, Esq.
Norman E. Siegel, Esq.
James Cameron Tribble, Esq.

For Sanford Heisler Sharp: Halsey G. Knapp, Jr., Esq.

Proceedings recorded by mechanical stenography, transcript produced by computer.

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P R O C E E D I N G S

(Call to the order of the Court.)

THE COURT: All right. This is the case of In Re: Equifax, Inc., Customer Data Security Breach Litigation, Case Number 17-md-2800.

First, let me ask counsel for the parties to identify yourselves for the record and the parties you represent.

MR. CANFIELD: Your Honor, this is Ken Canfield, and we represent ourselves as well as the Plaintiffs in our capacity as Class counsel.

THE COURT: Good afternoon, Mr. Canfield.

MR. CANFIELD: Good afternoon.

MR. SIEGEL: Good afternoon, Your Honor. Norman Siegel, co-lead counsel for the Plaintiffs.

THE COURT: Good afternoon, Mr. Siegel.

MR. TRIBBLE: Good afternoon, Your Honor. Cam Tribble, on behalf of Class counsel as well.

THE COURT: Good afternoon, Mr. Tribble.

MR. KNAPP: Your Honor, Halsey Knapp, on behalf of the Defendants. I have with me representing my client, Judge Sharp.

THE COURT: Good afternoon, Mr. Knapp.

All right. This is a hearing on the motion for immediate injunctive relief, Docket Number 1249.

Are you going to speak on behalf of the Plaintiffs, Mr. Canfield?

MR. CANFIELD: I am, Your Honor.

THE COURT: All right. It's your motion. I'll be glad to hear from you.

MR. CANFIELD: Thank you.

And may I express for the Plaintiffs our appreciation for the Court in scheduling this hearing on such a quick basis.

From the outset of this multi-district litigation, this Court made clear it wanted firms that were not selected for leadership to play a minor role in the litigation, and the Court restricted the work for which non-leadership firms could be compensated.

To this end, the Court ordered that time spent by non-leadership firms would not be compensable unless two conditions were met:

The first is that the firm reported its time to co-lead counsel on a monthly basis; and,

The second, the work for which that time related had to have been authorized by co-lead counsel.

To carry out this directive, as we told the Court we would do, co-lead counsel issued a protocol that went to all the non-leadership firms. It explained the basis for the Court's concern about non-leadership firms, and it shared

with them, among other things, that time spent investigating and filing serial complaints before the MDL was established was of little benefit and thus would not be compensable. And, in fact, time was of such little benefit, we instructed the non-leadership firms they shouldn't even bill for it.

Sanford Heisler Sharp is a firm that applied for but was not selected for leadership.

After we were appointed leadership, we invited Sanford, along with 47 other non-leadership firms, to play a very minor role in the case, subject to the Court's orders and the protocol that limited its work and compensation.

Sanford agreed to get involved on those terms, knowing that it should not bill for and would not be paid for the time it spent investigating and filing 45 serial complaints around the country before the MDL was created.

Fast forward four years. After all the appeals had been resolved and Equifax had paid the fee and in accordance with the settlement agreement, Class counsel allocated a share of the fee to each participating firm based on the value of its contributions and the time that had been submitted to us that was included in the fee application and that was approved by this Court. Because Sanford played a modest role in the litigation, it was allocated a modest share of the fee.

One year later, upset by its fee allocation,

Sanford has sued Mr. Siegel's firm, my firm, and Amy Keller's firm in a Tennessee state court, contending that we violated common law, Tennessee common law, by not crediting the firm for the work it says it did in investigating and filing its 45 Complaints before the MDL was created.

Sanford's audacity is stunning. The Tennessee lawsuit seeks compensation for work that is expressly non-compensable under the rules and protocols that governed its participation in the MDL, which Sanford knew about before it got involved.

Sanford is making a mockery of this Court's attempt to manage this case efficiently and to ensure that non-leadership firms wouldn't do exactly what Sanford is trying to do now, bill for a bunch of bloated time that has little relevance to the case.

It might be helpful to put the enormity of what Sanford is trying to do in a little bit of perspective.

In its Tennessee lawsuit, the firm claims to have spent more than 3,900 hours on this litigation. That is more than the total hours reported by eleven of the 13 leadership firms that this Court actually appointed to guide the case and handle the litigation.

It's a thousand hours more than all the time my firm spent from the inception of the case through the time of the fee application. And while ultimately I have more than

3,900 hours in the case, that's because of the immense amount of time and difficulty in dealing with final approval, the objectors, and the appeals all the way to the Supreme Court.

Sanford also is seeking hours that dwarf that of any of the other non-leadership firms that participated.

Not only is Sanford defying this Court's directives, but the firm also is trying to divest this Court of its exclusive jurisdiction under the final judgment and its authority under Rule 23 to oversee fees awarded in this MDL, including how the fee was allocated.

As was explained in Newberg on class actions, quote, "It is axiomatic that the Court has the ultimate authority to determine how the aggregate fee is to be allocated among counsel. The Court has that authority by virtue of its oversight of the class action and its assessment of a fee on the defendant or class. Inherent in the authority to assess the fee is the authority to determine who gets the fee."

Now, the normal process that firms follow when they're dissatisfied with their share of an allocated fee is to -- after class counsel have made the allocation, is to bring the challenge to the court that oversee -- that oversaw the class action. That would have been this Court.

By seeking to have its share determined in Tennessee, the only logical conclusion is Sanford knows this

Court will not abide the firm's attempt to flaunt the rules that governed its participation in the MDL.

So it's only logical to believe Sanford figured it might as well take a shot at convincing a Tennessee court and a jury that the Court's directives and management orders were unfair and that it deserves more money for the time it allegedly spent before the MDL was created.

Because Sanford's suit is a blatant attempt to dodge this Court's jurisdiction, evade this Court's directive, and get paid for work that this Court has already determined is non-compensable, we're here to ask the Court to enjoin Sanford under the All Writs Act from prosecuting the Tennessee action and from trying to challenge how much it got in the fee in front of any forum other than this Court.

If Sanford thinks it was paid too little, its remedy is to ask the Court for relief.

Now, in its opposition brief that was filed Monday evening, Sanford doesn't contend that it complied with the orders and protocol that governed its compensation in the MDL. Rather, Sanford largely ignores the order and protocol, admitted only that, quote, "The Court's orders may have some tangential relevance to its claim."

In its responsive brief, it goes on to make a totally bizarre statement. It says its claims in Tennessee, quote, "Are based on conduct occurring in 2022, arising after

this action was effectively concluded, on subject matter having nothing to do with" the parties' dispute in the MDL "about the Equifax data breach and not addressed in any manner in the parties' settlement agreement or the Court's orders."

I won't go through all the ways in which that statement is factually and legally untrue, but I will simply say that the fee allocation was not made in a vacuum. It was based on what happened during the history of the entire litigation, the Court's directives about what time was compensable, and the time and billing reports that Sanford submitted over the years.

That it doesn't even believe that the statement that I just read is true, all you have to do is go and read their Complaint or look at the demand letter that Mr. Sharp sent us. It's rife with references and reliance upon events that happened in the MDL and the orders that this Court issued. It simply construes those orders directly contrary to the terms of what the Court intended.

So much as Sanford might want to hide it, that Tennessee lawsuit is nothing more than a collateral attack on this Court's decisions and its judgments in managing the litigation.

Let me turn now to the -- in a little bit more detail the Court's efforts to restrict the billing and

compensation of non-leadership firms and the history of Sanford's involvement in this case.

If the Court remembers, about five years ago this courtroom was overflowing with 100 or more lawyers who all wanted leadership positions in this MDL.

THE COURT: I think the first words out of my mouth were, "The fire marshal would be appalled."

MR. CANFIELD: And if the Court recalls, that hearing began on a bit of a dramatic note. Your Honor came out and took the bench. And from all these lawyers that were in the courtroom, you called me up to the podium and you told me the day before, some anonymous person who objected to the appointment of our leadership group had sent to the Court's chambers the day before a package of materials that supposedly undercut our application, and the Court said, "Take a look at this and address it as you will."

One of the materials that the Court gave me was the transcript of the final approval hearing in the Anthem Data Breach Litigation, which had occurred shortly before the leadership hearing here.

While the Court was listening to all of those other applicants, I read through that transcript, and I learned that Judge Koh, who had the Anthem case, was surprised and outraged by the size of the lodestar and the fee implication -- fee application, which she suspected was bloated and the

result of incredible efficiency, and the major reason she gave for that was that the application contained billing from 53 firms that Judge Koh had not appointed to leadership positions, and she wondered how in the world could all those firms be involved in this litigation without unbelievable amounts of duplication. And she was so outraged about it, she said she was going to appoint a special master to investigate.

Now, at our hearing, when it came time for me to speak late in the day, I addressed Judge Koh's concerns in Anthem. And I told this Court that we were not going to have an Anthem problem here because we intended to put in place billing and time protocols that govern the role of non-leadership firms.

And in the colloquy that took place, after I had first raised that issue, the Court made it absolutely clear that it would not tolerate non-leadership firms running amuck and submitting bloated lodestar claims for work of little benefit to the Class.

Our discussion on the subject ended with the following statements:

The Court said, "Mr. Canfield, you've been in front of me enough to know I don't ever want to have something like this happen in front of me."

And I responded, "You have my personal assurance

that if we are appointed, it never will, Judge."

A few days later, the Court issued its order appointing leadership. The order, once again, made clear that the Court wanted the case handled efficiently, without duplication and unnecessary work, and it ordered that all parties' participating firms keep daily time records, as I told the Court we would want to have, and it had to send those records to the co-leads on a monthly basis. And in turn, the co-leads were directed to submit those records to the Court in camera on a quarterly basis.

The order said that failure to submit appropriate time records would be grounds for denying compensation.

The Court also specifically addressed the role of non-leadership firms in its leadership order. The Court said, quote, "In order for their time and expenses to be compensable, those not serving in leadership positions must secure the express authorization of co-lead counsel for any projects or work undertaken in this litigation."

Now, as we said we would do, once we were appointed, the co-leads quickly put together a time and billing protocol, which we sent to all the non-leadership firms. We told them we would strictly adhere to the Court's directive regarding their role in the case, that they had to get written authorization if they wanted to do any work for which they sought compensation, that simply reporting time

did not ensure that a firm would be paid for it, and that we would exclude any time that was inappropriate from our fee application.

We were aware that a number of firms, such as Sanford, had filed dozens of lawsuits around the country before the MDL was created, presumably to enhance their prospects for a leadership position.

To deal with that issue consistent with the Court's directive, we included the following language in the protocol, quote: "Time and expenses incurred prior to the appointment of co-lead counsel will be considered for compensation only to the extent they contribute to advancement of the litigation as a whole.

"Time investigating or filing serial complaints should not be submitted and will not be considered compensable time."

We submitted that protocol to the Court shortly thereafter in connection with our first in camera appointment submission. We explained to the Court the role that we intended non-leadership firms to pay. And the Court relied upon that protocol in approving our fee application and determining that the time was reasonable.

Taken together, the Court's directive at the leadership appointment hearing, its leadership appointment order, and the protocol issued by co-lead counsel constituted

the basic rules that govern Sanford's work and compensation in the MDL.

In accordance with the order, Sanford submitted its time on a monthly basis, as we required -- as required by the Court.

During the course of the litigation, Sanford reported spending a total of 1,213 hours with a lodestar value of $269,000.

Of that time, roughly a quarter, 330 hours were spent after co-lead counsel were appointed.

Before we filed the fee application, in accordance with what we told this Court we were going to do, we determined that almost all -- or we reviewed the records of Sanford and all the other firms in the case. We determined that about -- almost all of Sanford's time after the appointment, when they were performing work that was specifically authorized by us, was consistent with the governing rules.

But we cut most of its pre-appointment time because most of it related to filing dozens of repetitive Complaints around the country.

Co-lead counsel approved time for Sanford of roughly 520 hours, having a lodestar value of $106,000.

We told Sanford and all the other firms whose time was cut what we had done, and when we didn't have any -- and

we gave them specific -- we sent back their time records to them with color-coded entries as to explaining what we had done.

And when nobody objected to it, we included that time in the fee application, and that time was approved by the Court.

At the end of the case, the order approving the settlement agreement granted Class counsel the responsibility for allocating the fee to the participating firms using the standards informed by the Court's directive, appointment order, and protocol.

Any firm that was dissatisfied with that decision regarding its share of the fee had the right to challenge our decision by taking the issue to the Court, which retained jurisdiction in the final judgment over all matters relating to the settlement, including disputes about the allocation.

None of the more than 60 participating law firms has filed a challenge in this court to its share of the fee.

Sanford was well aware of its ability to challenge the fee application by seeking more money from this Court, but instead, it chose this bizarre gambit of suing co-lead counsel in Tennessee.

It's obvious why Sanford chose that path. The firm wants to do an end-around -- or an end run around this Court's orders and rules governing its role and compensation

in the MDL and get paid for work that this Court has already determined it's not entitled to be compensated for.

Sanford is clearly seeking to flaunt this Court's orders and jurisdiction, and that could not be more clear.

One, the Court unambiguously directed that non-leadership firms be paid -- not be paid for bloated lodestar of little value to the prosecution of Plaintiffs' claim. In Tennessee, Sanford seeks compensation for just that.

Two, as I mentioned, the Court order that firms submit their time each month to the co-leads and they wouldn't be compensated if they didn't comply with that order. Sanford submitted 1200 hours of compensable time to the co-leads. In contrast, in Tennessee, it seeks to be paid for more than 3,900 hours, as I mentioned, 2,700 hours more than it reported to the co-leads.

Neither we nor the Court have ever seen the time relating -- the records relating to that -- those 27,000 -- or 2,700 hours.

Three, the Court ordered that all the time submitted to the co-leads be submitted for in camera review so the Court could keep tabs on a realtime basis about what was happening and could intervene, if necessary, to prevent the case from running off the tracks.

In Tennessee, however, Sanford seeks compensation

for work that it never submitted to this Court or to co-lead counsel.

Four, the Court ordered that the non-leadership firms could be compensated only if they obtained authorization for their work from co-lead counsel.

Sanford, however, seeks compensation in Tennessee for work that there's no -- we didn't authorize it. We never would have authorized it. In fact, we told them in advance, before they got involved, it wasn't going to be authorized.

Five, the protocol that we put together and shared with the Court specifically provided the time spent investigating and filing serial complaints would not be compensable.

Sanford says in Tennessee that that protocol, the same protocol that was adopted pursuant to this Court's directive and that this Court relied upon in approving the fee application, is meaningless. They don't even mention it.

Six, the settlement agreement approved by the Court provided that the fee for work performed by Class counsel and other lawyers working at our direction are to be, quote, "distributed as determined by Class counsel."

In Tennessee, Sanford wants its fee to be determined by a jury that had nothing to do with this litigation.

Lastly, in the final judgment, this Court retained

jurisdiction over the implementation of the settlement agreement, including the distribution of attorneys' fees, and it kept and retained jurisdiction over all the lawyers that participated in the MDL, including Sanford and Mr. Sharp.

In Tennessee, this court seeks to avoid the Court's jurisdiction.

Allowing the Tennessee lawsuit to proceed under these circumstances will not only frustrate this Court's order, but it will also render meaningless this Court's efforts to manage the MDL and subject co-lead counsel to potential liability for doing exactly what the Court ordered us to do, and we assured the Court that we would in fact do.

And the impact is going to be felt not just in this MDL, but in future MDLs as well. Just consider a few examples. How can an MDL court efficiently manage the litigation and oversee the work of the participating lawyers if those lawyers can ignore the court's management orders by seeking compensation for their efforts in another forum under the guise that they want damages from the lawyers who are actually appointed to leadership positions by the court?

Firms looking to -- in the early stages of litigation, firms looking to bolster their product -- prospects for a leadership position, such as Sanford, would be incentivized to investigate and file as many federal court lawsuits as possible, notwithstanding that the lawsuits are

of little, if any, benefit to the litigation and simply clog the dockets of the federal courts.

Firms may figure if they don't get what they want in the MDL, all they have to do is try to convince a jury that their efforts were worthwhile and deserving of compensation by avoiding the MDL entirely.

The lawyers who are actually appointed the leadership positions by the court would be put in an untenable position. We're bound to comply with this Court's orders, as are other lead counsel in other MDLs, regarding the work and the compensation of the lawyers we directed.

But if Sanford's approach is permitted, our decisions, even if in strict compliance with the Court's orders, may subject us to personal liability under the laws of every state in which one of the lawyers participated in the MDL resides. And not just compensatory damages, but they want punitive damages against us for carrying out the directives of this Court.

The absurdity of Sanford's approach to resolving this dispute is made even more apparent when the Tennessee lawsuit is not considered in isolation.

There are 47 other leadership firms that participate -- non-leadership firms that participated in the MDL. If all of them had decided they wanted to be paid for pre-appointment work, notwithstanding this Court's order to

the contrary, we would be facing 48 separate state lawsuits seeking to apply the common law of dozens of different states, all challenging this Court's orders and our efforts to effectuate them. Surely the law does not leave the Court powerless to prevent that from happening.

Now, let me turn now to the specifics of the Tennessee lawsuit and show how those demonstrate the fact that the lawsuit undermines this Court's jurisdiction and frustrates its orders.

The entire Tennessee Complaint and the demand letter that Mr. Sharp sent to us before he filed it is premised on the construct that this Court got it wrong when it determined that all work must be done at the direction of co- -- Class counsel, that all time must be submitted to Class counsel and the Court, and that prepayment time for those filing serial complaints, like the Sanford firm, should not be considered compensable.

The factual allegations in the Complaint are not divorced from the history of the litigation, as Sanford wants to argue here. All of the facts in its Complaint are grounded in this Court's leadership appointment order, Sanford's conduct predating the MDL and this MDL, and Class counsel's conduct in carrying out this Court's orders. They just want to misconstrue what those orders say.

And if they want to litigate in Tennessee what this

Court intended with regard to non-leadership firms and whether we complied with our obligations as Class counsel in the way we allocated the fee, I'm sorry to say, Judge, but I think you would be perhaps our first witness that we would want to call in that litigation, which just demonstrates the absurdity of the approach that they're following.

Now let's look specifically at the counts of the Complaint.

Count One asserts that there was a confidential relationship between Sanford and co-lead counsel as a result of a, quote, "extreme power imbalance," close quote, created by this Court's leadership appointment order; that this alleged confidential relationship gave rise to a fiduciary duty under Tennessee law, and that the co-leads breached that fiduciary duty by not crediting Sanford in the fee allocation for over 1,000 hours of time that it never reported to Class counsel or this Court.

And it wants compensatory damages of more than $1 million in an amount to be determined at trial, plus punitive damages.

For this claim to fly, Sanford obviously has to convince a Tennessee jury or a judge that by issuing the leadership appointment order, this Court intended that co-lead counsel had a duty to compensate Sanford for its pre-appointment time that was not reported to or authorized

by us. That is exactly the opposite of what this Court ordered.

The second count is for breach of an implied contract. Sanford says that it is, quote, "the beneficiary of an implied or constructive contract from this Court's MDL order," close quote, and that we breached that implied contract by not crediting it in the fee allocation for time relating to the 45 serial Complaints that it filed.

The Complaint then goes on to say, quote, "Because defendants" -- that's co-lead counsel -- "have abandoned their obligations under the implied contract, it falls upon the court in this action," the Tennessee Court, "to determine what a fair and reasonable fee for Sanford's services to the Class (out of the $77.5 million attorneys' fee award) should be."

Again, Sanford is asking a Tennessee court or jury to determine what this Court meant in its leadership appointment order, and Sanford can prevail by convincing that court or jury that this -- only if it convinces them that this court meant something directly contrary to what this Court intended.

And it is the responsibility of this Court to interpret its own orders, and that's why the Court retained jurisdiction over the MDL.

Count Three is for quantum meruit.

Sanford claims that it provided valuable services that were critical in the outcome of the litigation; that co-lead counsel improperly failed to credit it for more than 1,000 hours of its work; and that consequently, the Tennessee court should award Sanford the reasonable value -- this is a quote, "the reasonable value of its legal services in light of all the relevant circumstances."

Again, under the orders and protocols governing its role in the litigation, Sanford was not entitled to credit for that time in the allocation. And arguing to the contrary, Sanford is simply trying to convince the Tennessee court that this Court's directive that non-leadership firms not be compensated for that time is wrong.

In Count Four, Sanford wants to be compensated for its thousands of hours of work under an unjust enrichment theory. That count suffers from the same flaws as the other counts.

It's not unjust that Stanford -- that Sanford was not paid for filing those 45 Complaints. Sanford was told that it wouldn't be filing -- or getting paid for those Complaints when it decided to enter into the litigation, and it just has no entitlement to be paid for that time under the orders of this Court.

The All Writs Act was made for situations like this one, where an injunction is necessary or appropriate to

prevent this court's jurisdiction from conduct that has the potential to undercut the Court's orders.

As the Supreme Court noted in the New York Telephone case, quote, "This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of the orders it has previously issued."

It does not matter that this MDL was -- has been closed or that, as Sanford claims, an injunction is unnecessary, because the Tennessee action allegedly involves a, quote, "peripheral post-litigation issue of whether defendants violated Tennessee law when they assigned Sanford a share of the fee."

The reality is that this Court retained jurisdiction over this matter, and Sanford is seeking compensation in Tennessee that violates the rules that govern its participation.

As the Eleventh Circuit explained in the Clay case that we cited in our brief and that it reaffirmed in the Burr case upon which Sanford relies, the All Writs Act allows courts to protect, quote, "not only ongoing proceedings, but potential future proceedings as well as already-issued orders and judgments." That's the exact situation that we have here.

The next issue raised by our motion for relief is whether the Anti-Injunction Act precludes the Court from issuing an injunction to stop a state court proceeding.

The Anti-Injunction Act has three exceptions, two of which are applied -- apply here.

As the Supreme Court stated in the Atlantic Coastline Railroad case, these two exceptions allow federal injunctive relief against state court proceedings where it is, quote, "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide the case."

The first of the two exceptions under the Anti-Injunction Act upon which we rely is where the -- an injunction of a state court proceeding is necessary in aid of the federal court's jurisdiction.

Now, historically, that exception only applied to in rem proceedings involving a race. But as the Eleventh Circuit and other courts have recognized, the exception also extends to contexts that are not true in rem proceedings but are roughly analogous to proceedings in rem. That's the situation before this Court.

There is an analogous race before this Court that justifies action under the All Writs and Anti-Injunction Act, and that's for two reasons.

First, whereas here, there's an attorneys' fee award the Class counsel are charged with allocating among all the firms that participate in the action, the aggregate fee, this Court's fee award is the equivalent of a race. It's essentially a limited fund, and that's because there's a limited amount of money to be allocated. And if the share of one of the participating firms is increased, the share of other firms that are participating would have to decrease. There's only a limited amount of money.

And so the Tennessee court cannot give Sanford a larger share of the fee without the affecting -- affecting the rights of the other participating firms which are not before this Court. Only this Court has jurisdiction of all the lawyers that participated in the -- in the litigation.

The second circumstance under which there's an analogous -- something analogous to a race before this Court is the litigation itself, the MDL proceeding.

As the -- as the Burr case the defendants rely upon acknowledges by quoting a prior Eleventh Circuit decision, a lengthy and complicated case -- or class action suit is the equivalent -- is the equivalent -- is the virtual equivalent of a race to be administered. And that's led to what the courts have called the multi-litigation exception to the Anti-Injunction Act.

And under that exception, a federal court can

enjoin a state court proceeding where the federal court and the parties have invested considerable resources in a complex matter, the federal court has retained jurisdiction over disputes relating to the matter, and the state court proceeding threatens to frustrate and disrupt the orderly management of the MDL.

That's the exact same thing that could happen here if the Tennessee court is not enjoined. The Court's orders regarding the role or compensation of non-leadership firms could be rendered meaningless. The Court's efforts to manage the MDL as it sees fit, not just in this but other MDLs, would be upset. The Court's discretion under Rule 23 to oversee the compensation received by participating firms in the Class action would be undercut. And if other non-leadership firms had chosen to follow Sanford's example by filing their own state court cases, the resolution of those cases would turn into a chaotic mess that would threaten the very purpose of the MDL.

Now, separate and apart from the innate jurisdiction exception to the Anti-Injunction Act, the Act also allows a federal court to issue an injunction to, quote, "protect or effectuate its judgments," and as courts have later said, "and its orders."

This is often referred to as the non-relitigation -- or the relitigation exception, and it's designed to

prevent issues that have already been resolved in the federal court from being relitigated in state court.

Again, that's exactly what's going on here. The Court has already decided that Sanford is only entitled to certain compensation. Sanford is seeking payment for thousands of hours that this Court has already determined it shouldn't be compensated. Therefore, Sanford can only prevail in its Tennessee action if it convinces the court or jury that the Court's orders were erroneous.

Sanford is also seeking to relitigate this Court's fee award, which considered and approved as reasonable the 500 hours that Sanford reported and co-lead counsel authorized.

In Tennessee, Sanford contends that, in fact, it reasonably spent more than 3,900 hours. But the reasonableness of its time and the balance of what can be treated as compensable has already been decided by this Court.

When you apply the principles of res judicata and issue preclusion to this situation, they clearly bar relitigation of the -- those issues in the case, Sanford in Florida and Tennessee. An injunction thus is justified to protect the Court's decisions from collateral attack.

Now, a number of other courts around the country, federal courts have faced similar situations and have

exercised their authority to stop a participating law firm in a federal class action from challenging in state court its allocated share of an aggregate fee resulting from the class action settlement. We cited those cases in our brief. I don't want to spend any time going over them.

But I do want to respond and address specifically Sanford's reliance on the Burr case from the Eleventh Circuit. That case is not, as Sanford contends, binding authority requiring that our motion for injunctive relief be denied.

To the contrary, the case supports our motion. That is because Burr held, as Sanford acknowledges on page 14 of its brief, that a state court proceeding may be enjoined if the state action directly attacks the substance of a federal court's earlier ruling.

That's exactly what's happening here. They're attacking all of those Court's management decisions and decisions about what was compensable and about what work Sanford can do in the MDL.

Beyond supporting our -- our motion, the facts and analysis by the Eleventh Circuit in Burr is really of little relevance. The case involved very different circumstances and considerations.

Unlike in this case, Burr did not involve the allocation of a class action fee by co-counsel among the

participating firms, nor did the state court action in Burr interfere with the federal court's exclusive jurisdiction to resolve questions arising out of the implementation of a settlement agreement.

Further, in Burr, there was no federal court order regarding how the two plaintiffs who brought the case that was enjoined, Blair and Trussell, were to keep and report their time or orders deciding what portion of their work was compensable.

Blair and Trussell never even appeared in the federal case. They were not subject to the federal court's oversight, and their claim to a share of the fee did not arise under the settlement agreement. Rather, Blair and Trussell claimed that they had a separate letter agreement that was entered into seven years before the settlement, and that that letter agreement entitled them to a portion of fees the class counsel -- and there was only one -- had received in the federal court case.

In contrast, in this case, Sanford appeared and participated in the MDL, its work and compensation was subject to the Court's orders, and its claim to a fee directly rises under the settlement agreement and this Court's orders, not some sort of a separate agreement that can be enforced in a state court without frustrating the federal proceeding.

Further, the underlying federal action in Burr was not a class action or an MDL. It was a mass action. As a result, the federal court has no authority under Rule 23 to oversee the fee at issue or to ensure that the lawyers' time was fair and reasonable.

And the plaintiffs, the state court plaintiffs in Burr, Blair and Trussell, did not argue in that case that the federal action was analogous to a race. They claimed that the race was the money in the qualified settlement fund that had not been distributed. And the logic of the multi-district litigation exception to the Anti-Injunction Act doesn't apply.

Moreover, and this is perhaps most important to the decision in Burr, the federal court in Burr had no jurisdiction, no subject matter jurisdiction over the claims that the dissatisfied counsel asserted. That is because -- and it's a strange set of procedural events -- when the two plaintiffs initially filed suit in state court, the federal counsel removed the court -- the case to federal court.

Judge Clemon granted a motion to remand the case, and then everything else that happened that was at issue in Burr occurred after that remand.

The Eleventh Circuit held that once Judge Clemon had remanded the case, he lost subject matter jurisdiction and he couldn't get it back, either as supplemental

jurisdiction or for any other reason.

THE COURT: And as I recall in that case, that was the only thing that all three judges on the panel agreed to.

MR. CANFIELD: That was my exact next point, Judge. There were three judges. The two concurrences said --

THE COURT: It was a very strange situation, where the opinion of the court was only agreed to by one judge and the other two expressly say, "We're only concurring in the judgment that the district judge had no jurisdiction, and the rest of it we don't join."

MR. CANFIELD: So I think that Burr is essentially -- I mean, except for that, all dicta.

THE COURT: Some of which helps.

MR. CANFIELD: And most of it is irrelevant. It just doesn't deal with our situation.

You know, in contrast to the situation in Burr, there's no question that this Court has jurisdiction over both Sanford and its claims pursuant to its retained jurisdiction in the final judgment.

And for all the reasons I've discussed -- I mean, essentially what the two concurrent opinions said in Sanford (sic) is there's no reason to issue an injunction to protect the Court's jurisdiction if it doesn't have any jurisdiction to begin with. That's what Burr stands for.

And our situation, obviously, is very different.

And as I said, for all the reasons I've discussed at some length today, the state court proceeding directly attacks -- the Tennessee action directly attacks this Court's orders governing Sanford's compensation.

So let me conclude by saying that we ask that the Court, for the reasons I've talked about today, enjoin Sanford from pursuing any claim relating to its share of the Equifax fee in any forum other than this Court, and that includes the forum in Tennessee.

And, lastly, I would say, Judge, that Sanford's opposition brief was just filed Monday night. We've gone through it as best we can. If the Court has some concerns about anything that's raised in that brief or its ability to issue an injunction under these circumstances, we would request a brief opportunity to file a reply brief and to more specifically respond to the points that they made.

Thank you, Judge.

THE COURT: Mr. Canfield.

Mr. Knapp, let's take a ten-minute break and then I'll hear from you.

MR. KNAPP: That's fine, Your Honor.

THE COURT: The Court's in recess for ten minutes.

(Recess taken from 2:54 p.m. until 3:03 p.m.)

THE COURT: Mr. Knapp.

MR. KNAPP: Thank you. May we proceed?

THE COURT: Yes.

MR. KNAPP: I'd like to start with a reference to the protocol that was mentioned by movant's counsel, and an important part of that protocol was not brought to the Court's attention. So let me read it to the Court.

"Time and expenses incurred prior to the appointment of co-lead counsel will be considered for compensation only to the extent they contribute to the advancement of the litigation as a whole."

I'm quoting from document 1249 at page 6 of the submission made by the movants.

Then it goes on to say, "Time investigating or filing serial complaints shall not be submitted and will not be considered compensable time."

Time on such investigating or filing of serial complaints is not what my client is seeking, either in Tennessee or here today, for that matter.

What they are seeking is a determination of the value of their contributions, in particular, of providing seven class representatives who were deemed to be a part of the group of 50 that was represented to the Court as being under the control of co-lead counsel.

The Tennessee action, if you would take the time to read the Complaint, is not one seeking to add hours to the lodestar. There was a tremendous amount of emphasis on, Oh,

there's so many more hours, and they're trying to add hours that were -- predated the appointment of counsel.

That's not what's going on. There's no effort to add to the lodestar going on here. That's a red herring.

Rather, in the perspective of roughly $77 million of attorneys' fees, roughly $20 million went to everybody but the co-lead counsel.

And the question fundamentally that my client has is its contribution not only of the seven class representatives, but its contribution proportional to the returns of the co-lead counsel. And that's a legitimate question, and there clearly has to be a forum somewhere where that question can be answered.

Now, let's talk about this a little bit.

If you look at -- this is -- Docket 1249-1 is a copy of the Tennessee Complaint.

And in its prayer for relief, it makes clear in B that they're seeking an award of compensatory damages for the value of SHS's legal services to the Equifax Class in relation to the overall $77.5 million fee award or, alternatively, disgorgement of benefits unjustly retained by defendants.

So I believe that the statements made to suggest that somehow that my client is trying to enhance its lodestar is misleading and not true.

Now, also from that same document, at paragraph 21 of the Complaint, although 77.5 million fee award was not based on lodestar, the Court made clear that it was not awarding fees based on a lodestar method, which invites disputes over matters such as billing rates.

Defendants demanded rigid application of an artificially deflated lodestar calculation when assessing the share of the fee award that would be allocated to my client. That is the crux of their Complaint.

Now, Ben, bring up slide 21.

When I got involved with this, and it's not even a week old yet, I asked to see what was the language of the settlement agreement and what was the precise language of the Court's order dismissing and making a final award in this action?

I was directed to Section 11.1 of the settlement agreement. Plaintiffs, through Class counsel, will request up to 77 and a half million dollars of the consumer restitution fund, representing 25 percent of the settlement fund, negotiated as part of the March 30, 2019, term sheet, to pay reasonable attorneys' fees for work performed by Class counsel or other counsel working at the direction in connection with this litigation, to be distributed as determined by Class counsel, not the Court but Class counsel.

This side note does not make allocation of the fee

award an obligation that is a requisite part of the settlement implementation, which is complete when the award was paid, nor does it set out any criteria or methods for apportionment of the Class fee.

The next slide, Ben, please.

Let's go to the Court's final order. This is at Docket 957, paragraph 21.

The settling parties are ordered to implement each and every obligation set forth in the settlement agreement in accordance with the terms and provisions of the settlement agreement.

The Court retains jurisdiction over this action and the settling parties, settlement Class members, attorneys, and other appointed entities for all matters relating to this action, including, without limitation, the administration, interpretation, effectuation, or enforcement of the settlement agreement and this final order and judgment.

As the Burr and Forman case has been discussed -- and I would agree with the Court. It is a Judge Tjoflat decision, and it is a little bit hard to follow, but I believe it is clear in the Tjoflat opinion that a provision that is this general and does not specifically say that it retains the right to deal with the apportionment of attorneys' fees after in the settlement agreement delegating that responsibility to class counsel, that the actions of our

client seeking the determination of what Class counsel did is a matter that has already been decided and foreclosed by this Court.

The next slide, please.

Docket 1957, paragraph 19, the settlement Class representatives, settlement Class members, and defendants are hereby permanently barred and enjoined from commencing, pursuing, maintaining, enforcing, or prosecuting, either directly or indirectly, any released claims in any administrative, judicial, arbitral, or other forum.

The permanent bar and injunction is necessary to protect and effectuate the settlement agreement, the final order and judgment, and the Court's authority to effectuate the settlement agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments. Nothing in this final order and judgment shall preclude any action to enforce the terms of the settlement agreement.

This does not say that it is necessary -- and remember what happened when this final order was entered. Payment was made. There's been a -- let's start at the very beginning, Ben, if you would, and let's go through the chronology of events here.

The next slide, please.

We had the event which gave rise to the suit in 2017.

There's the MDL order, which you're aware of, and the consolidation of suits.

In February 2018, the appointment of defendants as co-lead counsel. The protocol we talked about was in this time frame.

It was necessary to file an Amended Consolidated Complaint, and it was important for the Class representatives to in fact be identified and be part of that Amended Consolidated Complaint, the ones provided by my client.

In July of 2019, there was a Consumer Class settlement, and then there was final approval of that settlement in 2020.

It appears there were a series of appeals that went on, all relating to the Equifax settlement.

The next slide, please.

Then in February of 2022 -- because one of the first questions that struck me as I read all this is, why did it take so long for Sanford to complain about this? Why is it not only coming up here in 2022 and 2023?

Well, they didn't know what the distributions were going to be until they were -- and they were informed about it in an unusual set of circumstances. They were contacted to provide a 1099 so that the distribution could be delivered with a 1099, and not being told what the distribution was.

And so they placed a phone call to say, Well, what

is our settlement share? It was not announced in any fashion, and it was not shared what others were getting at the time either.

And so it was necessary, after finding out what the distribution amount was, to consider whether that was a valid share for the work they had done. And they engaged counsel, co-lead counsel to see if we could have a discussion as to whether or not that was a proper measure of value.

Within a month or two, this action was terminated and the Court's final order entered.

As I said, for the next probably ten months my client has attempted to resolve this dispute with lead counsel without filing claims, and those efforts were unsuccessful, and they filed the suit in Tennessee Chancery Court.

The next slide, please.

The All Writs Act, which has been invoked here by the movants, is an extraordinary remedy. It is used sparingly and only in the most critical and exigent circumstances. The Supreme Court case is cited here.

The next slide, please.

Relief may be granted under the All Writs Act only when necessary or appropriate in aid of the court's jurisdiction and the legal rights at issue are indisputably clear.

The Court's action, at least from my client's perspective, is that its activity is closed when the suit and the dismissal was filed and the final order entered. The Court --

THE COURT: I wouldn't spend a lot of time on that argument, Mr. Knapp. The law is so clear that I have the right to protect my judgments. I have the right to take action under the All Writs Act, whether the case is open or closed.

MR. KNAPP: I will move on beyond that issue.

How is your settlement jeopardized or impaired by questioning whether or not the attorneys' fees, which has been determined to be $77.5 million, impaired? How is that hurt?

The settlement amount is what it was. The amount that the lawyers have to share has been determined was made in the final order. How is that impaired when someone questions how that's allocated?

I'll move on from that argument as well.

The next slide, please.

As you know, the All Writs Act is controlled by -- or "tempered" might be a better way to say it, by the Anti-Injunction statute.

The next slide, please, Ben.

The next slide, please.

The Anti-Injunction Act serves as an absolute prohibition against enjoining state court proceedings unless the injunction falls within one of three specifically defined exceptions, and the movants have cited to two.

Move on, if we would, please, Ben.

Those exceptions are narrowly and strictly construed, citing to the Eleventh Circuit authority here.

The next one, Ben.

"Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." Again, a U.S. Supreme Court case.

The next item.

This is the first exception that is cited by the movants. "The necessary in the aid of jurisdiction exception is a narrow one and should be invoked only where federal injunctive relief is necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case."

It's our client's position the case has already been decided as of the final order that was entered, and thus that this exception does not apply.

Next.

The Anti-Injunction Act relitigation exception. This is -- and principles analogous to res judicata being applied in the context of whether or not an injunction should issue, and it prevents a losing party from skirting a federal court's decision by refiling the same case in the same -- in the state court.

So the question becomes: Is -- the suit that was filed in Tennessee, does it involve, first of all, a decision made by the federal court? And, secondly, is it the same case?

This exception is entitled Every Benefit of the Doubt, regarding whether the requirements of res judicata have been met, and it goes towards the state court. "An injunction can issue only if preclusion is clear beyond peradventure."

The next slide.

Here is a comparison trying to analyze whether or not this is the same issue that you decided when entering your final order in the multi-district litigation.

The parties in the Equifax case are known. The parties in the Tennessee case are known, and they're different.

The claims are different in the federal court in the MDL case. The claims are different in the state court case.

The nucleus of facts are different, though, somewhat related and somewhat not related. They arose at different times and different dates, and the award and the orders and the relief sought differ.

On that basis, we would argue that the relitigation exception does not apply here.

The next slide.

Burr and Forman. Burr and Forman was a class action, and there's some suggestion that that's distinguishable from the current action because it was not a multi-district piece of litigation. I would suggest to you that that distinction may or may not be legitimate as applied here.

In Burr and Forman, they were dealing with a somewhat similar situation, which was what fees would be paid from a settlement fund in the federal case.

But there, the federal court tried to take up the very issue of whether or not -- how the fees should be divided.

The federal court enjoined the state court action, but the Eleventh Circuit reversed, concluding that it lacked the power to do so under the Anti-Injunction Act.

Next, please.

The Anti-Injunction Act's animus is clearly rooted in federalism concerns, a desire to avoid tension and

preserve comity between the federal and state courts, because it is grounded in the constitutional guarantees of independence between each of those systems.

The next item.

The simple fact is that -- and this is the Eleventh Circuit speaking -- that the district court in the present case entered a judgment implementing a settlement and retained jurisdiction over the settlement fund, but did not, standing alone, render the injunction necessary in aid of its jurisdiction.

So that's the decision you have to make. You have to decide does the order that you entered in fact encompass the very issues that we're talking about?

For an injunction properly to issue, the matter in controversy in the federal court proceeding must be the virtual equivalent of a controversy over a disputed race in an in rem proceeding, and the state court proceedings must constitute a threat to the federal court's resolution of that controversy.

Next.

The Eleventh Circuit in Judge Tjoflat's opinion didn't -- concluded that the lawyers' efforts did not attack the substance of the Tolbert judgment, and that the judgment on the attorneys' fee question would not threaten the entitlement of the plaintiffs in the Tolbert action to the

judgment or settlement that they had obtained in that class action.

It is for that reason we believe that in fact Burr and Forman is controlling here, and it is an Eleventh Circuit case.

I did find it interesting to hear a reference to complex -- the complex case exception, and I think it was reiterated as the multi-district exception. I don't think I've heard it referred to in that fashion.

There is an exception if the cases are complex. I believe it's a complexity standard.

The next one, Ben, if we would.

And in the -- and I think in particular the case that raises this issue is the Flanagan case out of the Ninth Circuit, and there, the issue was that the judgment which had been entered by the district court was one that required that defendant to be disengaged from a bank, and not only was there an award of compensatory damages, but that there had to be a disgorgement of their interest in the bank and there had to be -- and because of the bank's requirements about net worth, they could not necessarily retire their equity interest without impairing the collateral of the bank. And in that circumstance, it felt that that would necessarily interfere with the court's prior judgment.

The other cases they cite, I believe, have no

direct factual similarities to what we have here.

Finally -- and then I'll confer with counsel before I sit down, if I may -- it's important that Class representatives and obtaining qualified and who have meaningful involvement in a case in a class action.

It was just today I came across a story in the ABA Journal, Lack of Standing Undoes Class Settlement. Standing to recover in one circuit does not support a nationwide settlement. A settlement that is made when, in fact, there isn't a class representative from each state can, in fact, fail.

And so we believe that the value of the contributions made by our client have been undervalued in this case and that they have a remedy in Tennessee court.

Now, if I may, may I confer with my colleague? Thank you.

(Discussion off the record.)

MR. KNAPP: One last point, if I may.

Referring again to the Tennessee Complaint, Document 1249-1, at page 82, reading from paragraph 41, in October of 2019, defendants assembled final time and expense reports for a submission to the MDL court as part of the motion seeking approval of the 77.5 million fee award.

Defendants emphasized that allocation of the attorneys' fees award among the various firms would not be

based on a strict application of the lodestar accepted and approved by the co-lead counsel, but would instead reflect the value that each firm contributed to the successful result, including how effectively and efficiently a firm handled its responsibilities, the nature of the work that was done, creatively, collegially, equity, and other relevant considerations.

Does the Court have any questions for me, Your Honor?

THE COURT: No, sir.

MR. KNAPP: Thank you very much. Thank you. Appreciate your attention.

THE COURT: Mr. Knapp.

Mr. Canfield, it's your motion. I'll give you the last word.

MR. CANFIELD: Your Honor, I'm going to try to be -- avoid being sarcastic, which I don't think is ever an effective argument, but some of what I just heard is -- I mean, it defies belief.

Mr. Knapp stood up and said surely there has to be a forum in which we can litigate these claims to get a larger share of the fee, suggesting that because if there's some, you know, confusion about what forum is available, it had to go to Tennessee and file this lawsuit.

The reality is that this Court has exclusive

jurisdiction. There was no question about it. We told Sanford that, when the issue arose, if they were dissatisfied, they should come to this Court. They didn't do it. There's no question about some -- or confusion about where to go.

The -- and just the absurdity of choosing Tennessee is obvious by what would have happened if Sanford argues to the jury that they're entitled to 20 percent of the fee based on this contributions to the settlement?

And then what if ten other firms came in and said, "We're entitled to 20 percent of the fee."

Well, you've already got more than 200 percent of the fee that's being allocated in these other jurisdictions, which is, obviously, incredibly bizarre. And that is why this Court has the exclusive jurisdiction. It's the Court that's in the position to deal with allocations.

The second thing that Mr. Knapp said that I found surprising is that they're not -- Sanford's not seeking to recover for the work that it did filing all of these Complaints or for work that wasn't submitted to this Court. It's not trying to increase its lodestar. It's just looking to get the value of its contributions.

But why then does it have the following paragraph in the Complaint? "During the course of the Equifax investigation and litigation, Sanford interviewed more than

12,000 individuals and drafted and filed 45 Class Complaints in 44 states and the District of Columbia. The firm invested over 3,900 hours in attorney and staff time and more than $1.4 million in lodestar. Its contributions to the litigation were significant and critical to the success of the Equifax litigation."

Obviously, if it's allowed to go forward in Tennessee, Stanford (sic) is going to be talking in front of a Tennessee jury about the 3,900 hours that it put into the case, and it's going to -- the idea that they would go to the Tennessee jury and say the only issues -- the only lodestar that's at issue here is the 500 hours that we were allowed in the fee application. That defies logic, and it also defies the terms of their Complaint.

Count One, when it talks about how it's been damaged, says Sanford has suffered damage because it reasonably expended over 1,000 hours of time that materially advanced the litigation but it was never credited for by co-lead counsel in the fee application.

So it's clear, there's no question but that the amount of its lodestar is going to be an issue in the Tennessee case.

Lastly, the only thing I would point out is that nowhere in Mr. Knapp's presentation did he address the orders of this Court that they're seeking to collaterally attack in

Tennessee. He didn't talk about the compensation orders. He didn't talk about the leadership order. He didn't talk about the meeting of the protocol.

He wants to talk about the final judgment as if the only thing that happened in this case is that the claims of the Equifax data breach victims were settled and everything else that relates to what happened here is just irrelevant.

That is, obviously, crazy. It is seeking before a Tennessee court specific amounts of time and money to enhance its supposed contribution and in direct violation of all of the directives that this Court established at the beginning of the MDL.

And they are suing us for a breach of our fiduciary duties for misleading the Court and all that stuff that was in Mr. Sharp's demand letter about how we committed fraud, and various other things that may surface in Tennessee. It is outrageous.

We faithfully executed the directives of this Court. We prided ourselves on doing that. We did everything possible to comply with what this Court told us to do. And because we did that, this law firm seeks to have us held responsible for over $1 million in compensatory damages and punitive damages that are unspecified in the Complaint. That is inappropriate. It's not logical. It's not legal, and this Court should enjoin it.

Thank you, Your Honor.

THE COURT: All right. I'm going to grant the motion to enjoin the litigation that has been filed by the Sanford Heisler Sharp law firm in the Chancery Court of Nashville, Tennessee, for the following reasons:

Number one, I think I'm authorized to do so under the All Writs Act. The lawsuit that the Sanford firm has filed in Tennessee is an attempt to directly undermine my management of the Equifax MDL and to subvert the orders that I issued in this case governing the award of attorneys' fees in this case.

And it's also my judgment that I'm entitled to do that under the exceptions to the Anti-Injunction Act.

I believe that the controlling Eleventh Circuit authority in this case is not the Burr and Forman case but, rather, the Wesch case at Wesch versus Folsom at 6 F.3d 1465, where the Eleventh Circuit discussed the two exceptions to the Anti-Injunction Act that are relevant here, one being what it called the in aid of jurisdiction exception, and it said this: The United States Supreme Court recognizes that a federal court injunction of state court proceedings is necessary in aid of jurisdiction when necessary to prevent a state court from interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that

case.

That is exactly what is happening here.

In my final order and judgment, I expressly said in paragraph 21 that the settling parties are ordered to implement each and every obligation set forth in the settlement agreement in accordance with the terms and provisions of the settlement agreement.

The Court retains jurisdiction over this action and the settling parties, settlement Class members, attorneys, and other appointed entities for all matters relating to this action, including, without limitation, the administration, interpretation, effectuation, or enforcement of the settlement agreement and this final order and judgment.

I don't know how that could be any more broadly stated. And what is happening here is an attempt by the Sanford firm to usurp the jurisdiction that I retained and hand it over to a state court in Tennessee and a state court jury. This is precisely the type of situation where that exception to the Anti-Injunction Act applies.

In the Wesch case, it went on to say in Battle v. Liberty National Life Insurance, "We held that a federal district court which entered a final judgment in a complex antitrust class action suit could enjoin in aid of its jurisdiction a later state court suit in which class members brought substantially similar claims.

"In reaching our decision, we held that the necessary in aid of jurisdiction exception is applicable both after the entry of a final judgment in federal court and to proceedings that are not in rem.

"Moreover, we reasoned that a lengthy and complicated class action suit is the virtual equivalent of a res to be administered."

And that's precisely the situation we have here. I retained jurisdiction over this case. I retained jurisdiction over the implementation of the settlement agreement, and an integral part of that was the award of attorneys' fees. And the Tennessee lawsuit is attempting to undermine and interfere with my jurisdiction over this case.

The Eleventh Circuit in Wesch went on to say that, "The 'protect or effectuate its judgments' exception to the Anti-Injunction Act, also known as the 'relitigation exception,' is essentially a res judicata concept designed to prevent issues that have already been tried in federal court from being relitigated in state court."

That is precisely what the Sanford firm is trying to do in this case.

In the settlement agreement itself, in Section 11.1 under Attorneys' Fees and Expenses, it said that Class counsel will request a percentage of the settlement fund "to pay reasonable attorneys' fees for work performed by Class

counsel or other counsel working at their direction in connection with this litigation, to be distributed as determined by Class counsel."

And in my final order and judgment, I expressly approved the settlement agreement and adopted it as part of that judgment.

The Sanford firm, if it was unhappy with that procedure for allocating counsel fees, could have objected. They didn't. But now it's trying to relitigate that in a state court.

In the application for attorneys' fees, Class counsel explicitly pointed out the number of total hours that leadership counsel had performed and how much of the total lodestar leadership counsel had performed.

If the Sanford firm had wanted to object to leadership counsel receiving an award commensurate with those hours and that proportion of the lodestar, they could have objected. They didn't. They're trying to relitigate that now.

In the application for fees, Class counsel explicitly said that they would limit potentially compensable time in the case, in paragraph 44 of their application.

If the Sanford firm had objected to that, said that was unfair, that was treating them unfairly or unreasonably or not recognizing their contribution to the case, they could

have objected. They didn't. Now they want to relitigate that in state court.

Attached to the application for attorneys' fees was a chart showing the hours worked by a firm and the lodestar for those by every firm that was involved in the case. The chart has the Sanford Heisler Sharp firm in it. It shows the total of 519.8 hours with a lodestar of $106,274.

If the Sanford Heisler Sharp firm had objected to that, either the hours allocated to them or the lodestar, they could have done so. It didn't. Now it's trying to relitigate that.

So for all of those reasons, I think that the injunction should issue in this case.

To address the bigger picture, I totally agree with Mr. Canfield that to allow disgruntled attorneys in an MDL class action settlement who aren't happy with their share of the attorneys' fees to then go to state court and try to relitigate their entitlement to fees in state court, that has no knowledge of the case, no understanding of what I was trying to prevent, which is exactly what's happening here, in all the orders that I issued appointing class counsel, approving the protocols for the award of attorneys' fees, reviewing on a quarterly basis every submission of hours by leadership and non-leadership counsel to avoid the situation that Judge Koh found herself in in the Anthem case, and to

have an orderly disposition of the attorneys' fees award, all of that would be totally undermined if I allowed this to occur.

A year or two ago there was an article that came out that said that Judge Chuck Briar and I were tied, until the time the article came out, for the living judges that had handled the most MDL cases.

Well, that doesn't mean my judgment is perfect, but it does mean that for over -- for almost 25 years I've been going to the annual MDL conferences at The Breakers, and every year we have one or more breakout sessions about the award of attorneys' fees.

If I had raised my hand and said, "I think that we ought to allow the apportionment of attorneys' fees in MDL class action settlements to be decided in state court based on individual lawsuits filed by counsel participating in the MDL," the response would have been, "You're crazy. Have you lost your mind?" And they would have been right.

So I'm granting the motion. I enjoin the Sanford Heisler Sharp firm and all of those in concert with them from proceeding with the lawsuit against Class counsel in the Chancery Court in Nashville, Tennessee, and order them to dismiss the lawsuit.

And I'll get out a written order as soon as possible, hopefully by next week, but I'm not making any

promises on that.

Do you have anything further?

MR. CANFIELD: Not from our standpoint, Your Honor. Thank you very much.

THE COURT: Mr. Knapp?

Oh, one thing I meant to add and forgot.

Mr. Knapp, in response to your statement there has to be a forum for your client's claim to be heard, it's right here. It's this case. It's me.

And if your client wants to dispute, litigate its allocation of the fee, it can file a motion in front of me. It could have done that earlier. It can still do it, but this is a forum for that matter to be heard.

MR. KNAPP: Thank you.

THE COURT: Do you have anything else?

MR. KNAPP: No, Your Honor. Thank you for your time.

THE COURT: Thank you very much, gentlemen.

Court's in recess until further order.

(Proceedings concluded at 3:47 p.m.)

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Reporter's Certification

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Diane Peede, RMR, CRR, CRC
Official Court Reporter
United States District Court
Northern District of Georgia

Date: March 10, 2023